

In re) Fair Hearing No. 11,063
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Appeal of)

The petitioner appeals a determination by the Department of Social Welfare denying the petitioner and his family A.N.F.C. benefits based on a finding that the family's principal wage earner is still employed.

1. The petitioner applied for A.N.F.C. on February 6, 1992, for himself, his wife and his two children after losing his job as a dishwasher at a hospital. Because his wife was still employed at that same hospital as a secretary, the petitioner was told that it must be determined whether he was the "principal wage earner" in order to assess the family's A.N.F.C. eligibility.

2. To calculate the petitioner's earnings, the Department compared the petitioner's and his wife's wage and tax statement W-2 forms for both 1990 and 1991. Those forms showed that the petitioner earned \$20,888.56 (1990 - \$8,847.97; 1991 - 12,040.59) and that his wife earned \$22,641.97 (1990 - 9,626.33; 1991 - 13,015.64) for both years.

Both of those tax forms are attached hereto as Exhibit No. 1 and incorporated herein by reference.

3. Because the petitioner's wife earned \$1,753.41 more for the two tax years examined, the Department concluded that she is the principal wage earner. Because she is still employed, the Department concluded that no deprivation exists and thus the family was not categorically eligible for A.N.F.C. benefits. A notice of denial containing that information was mailed to the petitioner on February 14, 1992.

4. The petitioner appealed the above decision presenting evidence that he had earned an additional \$354.00 through unemployment compensation in January of 1990. Although that still meant that his wife had been paid \$1,399.41 more during tax years 1990 and 1991, the petitioner argued that he should be declared the principal wage earner because he had worked more hours in that period. This was because he worked full-time and his wife was a part-time worker, albeit at a higher rate of pay.

5. At the hearing officer's request, the petitioner's employers provided a weekly breakdown of wages paid to the petitioner and his wife for the twenty-four months prior to the month he applied for welfare. Copies of those weekly breakdowns are attached hereto as Exhibit No. 2 for the petitioner and Exhibit No. 3 for the petitioner's wife and are incorporated herein by reference. Those records show that during the twenty-four months prior to the month of his application, from February of 1990 through January of 1992, the petitioner earned \$23,017.21 and the petitioner's wife

earned \$22,957.25. This amount was calculated by taking the last paycheck received February 1, 1992 by both parties which was actually earnings for January of 1992 and counting back 104 weeks (24 months) to the paychecks received February 17 and 18 by the petitioner and his wife, respectively. The paycheck received by the petitioner's wife on February 4, 1990 was not included because it reflected earnings in January of 1990.

6. Based on the actual earnings of the petitioner and his wife during the February 1990 through January 1992 period, it must be concluded that the petitioner earned \$59.96 more than his wife.

ORDER

The Department's decision is reversed.

REASONS

In order to be categorically eligible for A.N.F.C., a family with minor children must demonstrate, among other criteria, that the children are deprived of parental support due to either the absence incapacity or unemployment of one of their parents. Further, a parent will only be considered "unemployed" under the regulations if, among other criteria, s/he was the "principal wage earner". The regulations specifically provide as follows:

Unemployed Parent

An "unemployed parent" is one whose minor children are in need because a parent is out of work or is working part time, provided the parent meets all of the following criteria:

1. Is the principal wage earner, which means whichever parent, in a home in which both parents are living, earned the greater amount of income in the previous 24-month period. The last month of the previous 24 is the month immediately preceding the month in which application for ANFC-UP is made.

If both parents earned an equal amount in the previous 24-month period, then the State shall designate the principal wage earner, as determined by the District Director. Once correctly determined, the same parent shall continue as the primary wage earner for each consecutive month that the family remains on assistance without a break in benefits. If the family goes off assistance and then re-applies, the principal wage earner must be redetermined based on the more recent 24-month period.

W.A.M. § 2333.1

In this case, both the petitioner and his wife were gainfully employed during most of the twenty-four month period prior to their application for A.N.F.C. benefits. (February 1990 through January 1992) Their incomes fluctuated from week to week but were similar usually within \$25.00 to \$50.00 of each other. Although the petitioner's wife earned slightly more overall in both tax years, she worked fewer hours than her husband at a rate of pay about one-third above his. Clearly the income of both parents was equally important to the household and the loss of one was a critical blow to the family's finances.

The above notwithstanding, the A.N.F.C. policies and regulations do not recognize equal responsibility among wage earners but rather, as set forth above, require the designation of one as the "principal wage earner." It is only the loss of income on that person's part which triggers

the necessary deprivation. The principal wage earner is simply defined as that person who earned the most money in the twenty-four months before the month of application, not that person who worked the most hours.

The methodology employed by the Department in this case to figure the applicable earnings was flawed in that the W-2 tax forms relied on included earnings for the month of January 1990 which was before the twenty-four month period, and excluded earnings for the month of January, 1992 which should have been included. While it was certainly convenient to use these forms to get some sense of the petitioner's and his wife's relative incomes, it is necessary to actually calculate what money was earned in the actual twenty-four months immediately preceding February of 1992, the month of application.

When the amounts earned for those months are actually calculated by starting with the last paychecks (February 1, 1992) covering the last month (January, 1992) and going back for 104 weekly or 52 bi-weekly paychecks to cover the prior twenty-four month period, the petitioner comes out a few dollars ahead of his wife. The bulk of the discrepancy between this figure and those used by the Department which gave the lead income to his wife, was based on the more than \$1,450.00 she made in January of 1990 when he was unemployed. That month should never have been used in the calculations.

As the petitioner actually earned more money, although just slightly more, in the twenty-four months before the month of application, he should be considered the primary wage earner for purposes of the February 1992 A.N.F.C. application.

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